

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ECONOMY PREFERRED INSURANCE
COMPANY,

Plaintiff,

v.

ADAM RODGERS and APRIL
RODGERS,

Defendants.

CASE NO. C18-1589-JCC

ORDER

This matter comes before the Court on Defendants Adam and April Rodgers' motion for leave to file counterclaims (Dkt. No. 12). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

Defendant April Rodgers was severely injured after being ejected from a Polaris Ranger all-terrain vehicle (the "subject vehicle") that she was riding in as a passenger. (Dkt. No. 12-2 at 3.) The subject vehicle was owned and operated by non-party Dennis Thomas. (*Id.*) Mr. Thomas had purchased, licensed, and insured the subject vehicle for use on public roads. (*Id.*)

At the time of the accident, Defendants had an insurance policy (the "Policy") with Plaintiff Economy Preferred Insurance Company. (*Id.* at 1.) The Policy provided underinsured

1 motorist coverage (“UIM”) in the amount of \$250,000 per person and personal injury protection
2 (“PIP”) in the amount of \$10,000 per person. (*Id.*) Given the severity of Ms. Rodgers’ injuries
3 and the fact that Mr. Thompson was underinsured, Defendants made a claim with Plaintiff under
4 the Policy’s UIM and PIP provisions. (*Id.*)

5 Plaintiff denied the PIP claim, asserting that “an ATV is not a covered auto under the
6 policy.” (*Id.* at 4.) The PIP provision defined “Auto” to not include “self-propelled equipment
7 designed for use principally off public roads.” (*Id.*) Plaintiff also denied Defendants’ UIM claim
8 because the subject vehicle “was not designed for use mainly on public roads.” (*Id.* at 5.) After
9 denying coverage, Plaintiff filed this lawsuit seeking a declaration that Plaintiff was not
10 obligated to provide coverage under either the PIP or UIM provision. (*See* Dkt. No. 1.)

11 Defendants now seek leave to amend their answer to assert the following counterclaims:
12 (1) breach of contract; (2) bad faith; (3) violation of the Insurance Fair Conduct Act, Revised
13 Code of Washington Section 48.30.015; (4) violation of the Washington State Consumer
14 Protection Act, Revised Code of Washington Section 19.86 *et seq.*; and (5) negligence. (*Id.* at 7.)
15 Plaintiff objects to Defendants’ motion, arguing that the counterclaims are futile. (Dkt. No. 13 at
16 1.)

17 **II. DISCUSSION**

18 **A. Motion to Amend Legal Standard**

19 Motions to amend an answer to assert counterclaims are analyzed under the liberal
20 amendment standard of Federal Rule of Civil Procedure 15(a). *See* Fed. R. Civ. P. 13, Advisory
21 Committee Notes 2009 Amendments (“An amendment to add a counterclaim will be governed
22 by Rule 15.”). Regarding pleading amendments, district courts “should freely give leave when
23 justice so requires.” Fed. R. Civ. P. 15(a)(2). The generosity in granting leave to amend is “to be
24 applied with extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051–
25 52 (9th Cir. 2003). Courts are to consider five factors in determining whether to grant leave to
26 amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of

1 amendment; and (5) whether the pleading has previously been amended. *See, e.g., United States*
2 *v. Corinthian Colls.*, 655 F.3d 984, 995 (9th Cir. 2011).

3 Defendants' motion is timely, not made in bad faith, would not prejudice Plaintiff, and
4 Defendants have not previously amended their answer. The only ground that Plaintiff raises in
5 opposition to Defendants' motion is that the proposed counterclaims would be futile. (*See* Dkt.
6 No. 13.) An amendment is futile when "no set of facts can be proved under the amendment to the
7 pleadings that would constitute a valid and sufficient claim or defense." *Missouri ex rel. Koster*
8 *v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (quoting *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d
9 209, 214 (9th Cir. 1988)). Granting or denying leave to amend rests in the sound discretion of the
10 trial court and will be reversed only for abuse of discretion. *Swanson v. U.S. Forest Serv.*, 87
11 F.3d 339, 343 (9th Cir. 1996).

12 Plaintiff asserts that Defendants' counterclaims are futile because the Policy's UIM and
13 PIP provisions exempt the subject vehicle from coverage. (Dkt. No. 13 at 1–4.) Plaintiff argues
14 that the subject vehicle was not "designed for use mainly on public roads" but "designed for use
15 principally off public roads." (*Id.*) In support of its position that the subject vehicle is exempt
16 from coverage, Plaintiff cites from the Owner's Manual of a 2017 Polaris Ranger XP 1000 EPS
17 Utility Vehicle. (*Id.* at 4.) Plaintiff notes that the manual states that "[t]he Ranger is an off-road
18 vehicle," and instructs operators to "[a]void paved surfaces" and "not operate [it] on public
19 roads." (*Id.*) Thus, Plaintiff argues that the subject vehicle is not covered under the Policy's plain
20 language, and Plaintiff cannot be liable for any of Defendants' proposed counterclaims. (*Id.*)

21 Plaintiff's argument confuses the standard that the Court must apply to Defendants'
22 motion. At this stage, the Court asks whether Defendants' proposed counterclaims are sufficient
23 to withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Miller*, 845
24 F.2d at 214 (citing 3 J. Moore, *Moore's Federal Practice* ¶ 15.08[4] (2d ed. 1974) ("[the] proper
25 test to be applied when determining the legal sufficiency of a proposed amendment is identical to
26 the one used when considering the sufficiency of a pleading challenged under Rule 12(b)(6).").

1 Under this standard, Defendants have plausibly alleged that Plaintiff is liable for the
2 counterclaims asserted. Defendants assert that the subject vehicle was purchased, licensed, and
3 insured for use on public roads. (Dkt. No. 12-2 at 4.) Defendants further assert that Plaintiff
4 denied its claims under the Policy without conducting an adequate investigation into the subject
5 vehicle. (*Id.* at 5.) Defendants allege that, had Plaintiff done so, it would have discovered that the
6 subject vehicle was in fact covered under the Policy's UIM and PIP provisions. (*Id.*) Accepting
7 these allegations as true, which the Court must do, Defendants' have plausibly alleged that
8 Plaintiff wrongfully denied their claim by failing to conduct an adequate investigation into the
9 subject vehicle and Defendants' UIM and PIP claims. To the extent Plaintiff offers contradictory
10 evidence regarding the subject vehicle, it is making a premature summary judgment argument.

11 **III. CONCLUSION**

12 For the foregoing reasons, Defendants' motion to file counterclaims (Dkt. No. 12) is
13 GRANTED. Within five (5) days of the issuance of this order, Defendants' shall file an amended
14 answer that includes their proposed counterclaims, previously filed under Docket Number 12-2.

15 DATED this 20th day of May 2019.

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19 John C. Coughenour
20 UNITED STATES DISTRICT JUDGE
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